graduate this June. It took me 31 years to get to this point in my life, so I thank God that there was a program available to me. Although my circumstances are different than some of my classmates, we're all there for the same reasons, to get our G.E.D. or better yet our diploma. Senator as far as I'm concerned, I wanted this very badly, but I have been married 27 years, have two children one of which also graduates this year from Penn. I never had to work so my education wasn't the top on my list. Because my husband worked and took care of us and the house. But most of the kids in the program need this educational program to continue to grow into productive adults. Our counselors and teachers are the best, they work very hard to keep things going well at school. These programs need to keep going and I know that you will do your best to keep it going.

Now to get to the second reason I'm writing to you. I would like to take this opportunity to invite you to my graduation on June 14 at 7:30 p.m. It will take place at Newark High School. Myself and I know all the other students and staff would be honored to have you there. I know you are a very, very busy man but if you could find it in your heart and schedule to make it, I would be happy to have you there.

Sincerely,

MRS. JUDI ROBINSON.

Mr. President, the reason I read that into the RECORD is I do not think we should lose sight of the fact that there are thousands and thousands and thousands of women and men like Judi Robinson who are going back to try to get the basic education that for whatever reasons they did not get when they were children. I think our reluctance to put as much emphasis on the educational needs in this country and the Federal responsibility to participate in that is a serious mistake. I am sure all of my colleagues, and I know the Senator in the chair, the Senator from Colorado, like everyone else in here, shares a sense of pride when there is someone in their State like Judi Robinson who goes through that effort.

I remember discussing with my friend from Colorado how his mother went back and her significant educational accomplishments and what she has done. I just thought it worthwhile to let people know that there are a lot of people like Judi Robinson still fighting hard, who still have faith in this operation, still have faith in the system, and still think they can better themselves through education.

I thank the Chair for this time and I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. I ask unanimous consent that I may be permitted to speak for up to 5 minutes as if in morning business.

The PRESIDING OFFICER (Mr. COVERDELL). Without objection, it is so ordered.

Mr. SPECTER. I thank the Chair.

NOMINATION OF DR. HENRY FOSTER

Mr. SPECTER. Mr. President, I compliment the Labor and Human Resources Committee for reporting out the nomination of Dr. Henry Foster to be Surgeon General of the United States.

Earlier this morning, the committee met and by a 9-to-7 vote recommended the confirmation of Dr. Foster for Surgeon General. Two Republicans joined with seven Democrats in favoring his nomination and thereby bringing the nomination to the floor.

It is my hope that we will take up Dr. Foster in this Chamber. It is my sense that there are sufficient votes to bring Dr. Foster to a vote in the face of what has been announced to be a prospective filibuster. There is at least one Senator on the committee as reported who favors bringing Dr. Foster to a vote even though that Senator voted against him in committee.

I had occasion to meet with Dr. Foster early on, and at that time I was convinced that the sole issue was the issue of whether Dr. Foster should be disqualified from being Surgeon General because he had performed abortions, a medical procedure which is legal and authorized by the U.S. Constitution. It seemed to me at that time that all the other matters which were brought up were red herrings, and that real opposition to Dr. Foster lay in the fact that he had performed abortions, a procedure authorized by the Constitution of the United States.

I said on the Senate floor early on that Dr. Foster was entitled to be heard by the committee, entitled to have his day in court, so to speak, in this Chamber for a vote, both out of fairness to Dr. Foster as an individual and really as a sign that nobody would be railroaded out of this town without having a day in court, a chance to have an up-or-down vote in the Senate.

There is a very important precedent beyond Dr. Foster as an individual as to what he is entitled to as a matter of fairness and that is to others who may be interested in coming to Washington, tempted to come to Washington to perform public service. And many would be discouraged if Dr. Henry Foster would not be entitled to fair treatment by the Senate of the United States.

I thought that reasons given by our colleague, Senator FRIST, in supporting Dr. Foster's nomination were very important; that Senator FRIST, a physician himself, emphasized Dr. Foster's commitment to try to combat teenage pregnancy, and that may be the No. 1 social problem in America today. If that can be brought under control, then there is no better person to try to do that than the Surgeon General of the United States. And also Dr. Foster's commitment to press for abstinence and to press for family values; those are positions which I think are very appropriate for the Surgeon General.

So Dr. Foster has cleared a very significant hurdle in the affirmative vote of the Labor and Human Resources Committee. Some predicted he would never get that far.

From what I sense, the climate in our body is to favor his nomination coming to the floor for a vote. I think a filibuster will be defeated and I think ultimately Dr. Foster will be confirmed. That is a very positive sign of respect for the laws of the United States, as interpreted by the Supreme Court, that a woman does have a right to choose, that a nominee like Dr. Foster is not disqualified because he performed a medical procedure, albeit abortion, authorized by the Constitution, and that men and women of character and good will can come to this town and get a fair hearing and perform an important public service.

I thank the Chair and I yield the floor.

COMPREHENSIVE TERRORISM PREVENTION ACT

The Senate continued with the consideration of the bill.

Mr. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. Mr. President, I rise to speak on the bill before the Senate at this time, S. 735, the Comprehensive Terrorism Prevention Act of 1995.

Mr. President, let me say first how pleased I am that the leadership of both parties has reached agreement on so much in this bill and met President Clinton's challenge to reach a prompt and bipartisan consensus on counterterrorism legislation in the aftermath of the tragedy in Oklahoma City.

Most of the key provisions of the President's counterterrorism bill, offered earlier in the year by Senator BIDEN and others, are included in the measure before us. And I thank the majority leadership of the committee for doing so. But, as Senator BIDEN mentioned last night, there are a few provisions that have not been included.

That is why this morning I will offer two amendments which would restore two provisions from the original bill to this genuinely bipartisan effort, and I am hopeful that there is an opportunity here for bipartisan support for these two law enforcement measures, as well.

Mr. President, in my view, and in the view of those I have spoken to in the Federal and State law enforcement communities who are involved in the daily, difficult business of pursuing terrorists, these two provisions, which would increase law enforcement's capacity to be involved in surveillance through wiretapping of terrorists, would be extremely helpful to the law enforcement community's efforts to penetrate the highly secretive world of

terrorists. Indeed, I can imagine a number of situations where the power granted by these two amendments would provide exactly the kinds of tools that could make a difference in stopping terrorists before they strike.

Mr. President, since joining the Senate, I have spent a fair amount of time and effort considering how we, as a nation, can best prepare ourselves to counter and stop terrorists' threats because of my fear that, though America domestically has been relatively spared, at least was when I began these inquiries, from the pain of terrorist attack, certainly more so than other nations in the world, that because of political events in the world, it was inevitable that unless we directed, created some defense there, we would suffer. And, unfortunately, we have.

As I look back, the first hearing I ever chaired as a Senator concerned the coordination of our antiterrorism efforts. And in every presentation on hearings that I have been involved in since, whether as a member of the Governmental Affairs Committee or involved in the ad hoc task force on terrorism, which I was privileged to organize, witness after witness, whether they were from the State Department or the FBI or the U.S. attorney's offices, or think tanks around this city or country, emphasized the special importance of surveillance and infiltration to preventing and prosecuting terrorist attacks.

Mr. President, this says the obvious, but it needs to be said: Terrorists are cowards. Terrorists are cowards because they strike at undefended targets. And while we are quite logically now, in the aftermath of Oklahoma City, attempting to rebuild our defenses around more likely targets, particularly public buildings affected, the terrorist group that wants to create panic in our society, wants to punish our society, wants to strike at the sense of order and security in our society can, as we have seen in other settings, just as easily not strike at a governmental building, but go down the street and attack a large private building, an office building, or strike, as some have suggested, at the water supply in a community; so that we can never defend against all the potential targets of terrorists.

The best defense is an offense. And the offense in this case, as this bill carries out in many ways, is to be watching people who indicate by their own behavior that they are capable of violent acts. I am not talking about inhibiting political freedoms here. We are not talking about prohibiting anybody from writing or speaking or demonstrating in a way that they believe, even if we find it abhorrent. But if they act in a way that indicates they may be capable of violent acts, criminal acts, then we, the people, should have our law enforcement agents there watching them, listening to them, infiltrating their groups to see to it that whenever possible we can stop them; we can strike before they strike at the heart of our society to prevent more death and destruction.

The witnesses that spoke to committees that I have been on were commenting mostly on internationally inspired terrorism, but they focused again on the importance of electronic surveillance as a component of the overall approach of stopping terrorist acts whenever possible before they are committed, and electronic surveillance is part of that.

I would argue that electronic surveillance may be more important with domestically based terrorists than with international terrorism. So far as we know, they are not generally reliant on outside State sponsors who, at some point, may be vulnerable to political or military pressure.

Our weapons here are limited to effective law enforcement, including one of the most powerful tools law enforcement has, which is carefully circumscribed, legally authorized electronic surveillance, particularly in this high-technology communication age.

AMENDMENT NO. 1200 TO AMENDMENT NO. 1199

(Purpose: To amend the bill with respect to emergency wiretap authority)

Mr. LIEBERMAN. So, Mr. President, the first amendment I am offering today would add the words ''domestic or international terrorism'' to the limited number of situations in which the Attorney General, the Deputy Attorney General, or the Assistant Attorney General can obtain an emergency 48-hour wiretap without having to go court in that first period of time. Under current law, those three Justice Department officials and no others may authorize emergency electronic surveillance where there is ''first, immediate danger of death or serious physical injury to any person; second, conspiratorial activities threatening the national security; and third, conspiratorial activities characteristic of organized crime.''

This all is when there is not, in the opinion of the law enforcement officials, time to get a court order. But the important condition in this law is that within 48 hours of that emergency authorization for electronic surveillance from within the Justice Department, law enforcement officers must obtain a court order for the wiretap under the normal proceedings for court orders.

They must submit the same affidavits and documents establishing probable cause that are required for any other wiretap.

The top three Justice Department officials who can make these emergency authorizations have a strong incentive to be cautious and correct in authorizing emergency wiretaps without a court order, because if a judge does not issue a court order supporting a wiretap within 48 hours, any information obtained via the emergency wiretap is inadmissible in court.

Mr. President, this amendment, therefore, would simply add the words ''activities characteristic of domestic or international terrorism'' to the list of emergency situations where law enforcement has hours, and not days, to get the evidence needed to make an arrest, find a chemical weapon, diffuse a bomb or perhaps rapidly clear a building that may be the target of a terrorist attack.

Given the devastating effects of these terrorist acts, which are assaults not only on individuals but on whole communities—in fact on our Nation and on the democratic processes and the liberties that we have—do we not want to give our law enforcement officials the same authority to obtain temporary emergency wiretaps they have under current law when pursuing organized crime cases? I think so, and I believe the American people would think so as well.

Mr. President, I, therefore, have an amendment which I send to the desk at this time.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Connecticut [Mr. LIEBERMAN] proposes an amendment numbered 1200 to amendment No. 1199.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Insert at the appropriate place the following new section:

SEC. . REVISION TO EXISTING AUTHORITY FOR EMERGENCY WIRETAPS.

(a) Section 2518(7)(a)(iii) of title 18, United States Code, is amended by inserting ''or domestic terrorism or international terrorism (as those terms are defined in 18 U.S.C. 2331), for offenses described in section 2516 of this title.'' after ''organized crime''.

(b) Section 2331 of title 18, United States Code, is amended by inserting the following words after subsection (4)—

''(5) the term 'domestic terrorism' means any activities that involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State and which appear to be intended to intimidate or coerce a civilian population or to influence the policy of a government by intimidation or coercion; or to affect the conduct of a government by assassination or kidnapping.''.

(c) Section 2518(7) of title 18 is amended by adding after ''Notwithstanding any other provision of this chapter,'' ''but subject to section 2516,''.

Mr. LIEBERMAN. Mr. President, I want to finally, before yielding the floor, indicate for the RECORD that the amendment does not change the underlying crimes for which an emergency wiretap can be authorized in title 18, United States Code, section 2516. It just says that if those crimes are part of a domestic terrorist plot, an emergency wiretap can be ordered. And these crimes include: Any offense punishable by death or imprisonment for more than 1 year, including violations of the Atomic Energy Act relating to sabotage of nuclear facilities and fuel or espionage and treason.

Also, let me point out that the definition of ''terrorism'' covers violent acts or acts dangerous to human life.

Mr. President, I urge adoption of the amendment. I yield the floor.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Alaska.

Mr. STEVENS. Mr. President, I ask unanimous consent to proceed as in morning business for the purpose of explaining a bill which I would like to introduce at this time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. I thank the Chair.

(The remarks of Mr. STEVENS pertaining to the introduction of S. 868 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I understand what my dear colleague from Connecticut is trying to do with this expansion of the emergency wiretap authority, but I apologize to him because I have to rise to oppose this amendment which would expand emergency wiretap authority permitting the Government to begin a wiretap prior to obtaining court approval in a greater range of cases than the law presently allows.

I find this proposal troubling, and let me list some reasons. I am concerned that this provision, if enacted, would unnecessarily broaden emergency wiretap authority. Under current law, such authority exists when life is in danger, when the national security is threatened, or when an organized crime conspiracy is involved. That is title 18, United States Code, section 2518(7).

This authority is constrained by a requirement that the surveillance be approved by a court within 48 hours. The President's proposal contained in this amendment would expand these powers to any conspiratorial activity characteristic of domestic or international terrorism. I personally do not believe that this expansion is necessary to effectively battle the threat of terrorism.

Virtually every act of terrorism one can imagine which would require an emergency wiretap—that is, the threat is so immediate that the Government cannot obtain a court order before instituting the wiretap—will certainly also involve ''an immediate danger of death or serious physical injury,'' or ''a conspiratorial activity threatening the national interest,'' as defined in current law. Thus, expanding the Government's emergency wiretap powers to any conspiratorial activity characteristic of domestic or international terrorism would add little to existing authority. However, the little that it does add or will add is particularly troubling.

This amendment defines domestic terrorism in an unwise and extremely broad manner. The amendment defines domestic terrorism, in part, as ''any activities that involve violent acts or acts dangerous to human life and which appear to be intended to intimidate or coerce a civilian population or to influence the policy of Government by intimidation or coercion.''

That is a potentially vague and very loose standard. There are legitimate acts of protest that could be caught up in this definition, because they, in some way, pose a danger or are viewed as ''intimidating.''

No one, of course, would contend that activities that truly threaten the public safety or an individual should go uninvestigated or unpunished. However, the standard for initiating a wiretap without a court order should certainly be higher than this amendment proposes.

Mr. President, a wiretap order is deliberately somewhat difficult to obtain. It is more difficult because it is more difficult to get the Justice Department to approve it than it is to get a judge or magistrate to approve it. Because wiretaps are so intrusive and conducted in secret by the Government in circumstances under which the subject has a reasonable expectation of privacy, the courts and Congress have required that the Government meet a heightened burden of necessity before using a wiretap to ensure that civil liberties are secure.

The law also, of course, recognizes exigent circumstances, because in a true emergency, when lives are at risk, we would not want law enforcement to wait for court-approved wiretaps any more than we expect a police officer to obtain a search warrant before chasing an armed and fleeing suspect into a house. Our present wiretap statute recognizes this with its emergency provision and expanding the exception should give us pause. We must ensure that in our response to recent terrorist acts, we do not destroy the freedom that we cherish. I fear that the amendment does take us a step down that road, and for these reasons, I oppose the amendment.

Let me mention one other thing. The distinguished Senator from Connecticut is very sincere and well-intentioned with this amendment. I acknowledge that. And he is an acknowledged authority on law enforcement. But I have to question whether this amendment would permit the Government to obtain emergency wiretaps; in other words, a wiretap without a court order—let me repeat that; a wiretap obtained without a court order—of, let us say, some of these groups in our society today, ranging from the right to the left. Take a gay rights group like Act Up, or an environmental group like some of the more vociferous environmental groups; or you could take some groups on the right that are vociferous that stage a sit-in that may violate some State property or some loitering felony. It seems to me that a demonstration blocking a busy street or entrance to a church or hospital could endanger human life under certain circumstances, and certainly a demonstration of this nature would be intended to change the Government's policy. This amendment could thus permit the Government to listen to the conversations of such groups without obtaining a court order.

This is deeply troubling to me, and I think to anybody who believes in the Bill of Rights and in the important protections the Constitution affords us. It is easy to come up with circumstances that would justify a wiretap, but then you meet the emergency requirements already in law. So I would rather stick with the current law.

So I urge my fellow Senators to vote against this. That is with a full understanding of what the distinguished Senator from Connecticut is trying to do, and with some sympathy toward what he is trying to do, except I do not think we should expand the wiretap laws any further.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. BIDEN. I rise to support Senator LIEBERMAN's amendment on emergency wiretap authority. Quite frankly, Mr. President, this amendment would add to this bill the President's proposal in the President's original bill to extend authority for emergency wiretaps—which are already available, I might add, for organized crime cases—to terrorism crimes. And I am sure people looking at this debate are probably thinking: Wait a minute. Senator ORRIN HATCH is arguing against this on civil liberties grounds, and BIDEN being for this—I was going to facetiously say something, but I will not say it. This is no time for humor.

At any rate, the reason I am for this bill—and I have a pretty long record and history here of being as vigilant in the civil liberties of Americans and constitutional rights as anyone in this body—is that I do not see a lot of distinction between crimes of terrorism and organized crime. It is kind of basic to me. If the justification exists for organized crime, why would it not exist for crimes of terrorism?

Now, let me explain first what probably my friend from Connecticut has already explained—I apologize if I am going over old ground; I will be brief—what an emergency wiretap is and how limited an emergency wiretap is.

In almost all cases, the Government has to get a court order to initiate a wiretap, under stringent standards set out in current law. The emergency wiretap authority allows the Government to initiate a wiretap without a court order in emergency situations involving, one, immediate danger of death or serious physical injury to any person; conspiratorial activities threatening national security; or conspiratorial activities characteristic of organized crime activities. Only the top three Justice Department officials—the Attorney General, Deputy

Attorney General, and Associate Attorney General—can organize an emergency wiretap.

Now, if it stopped there, I could see why a lot of people would say, even with that, that is still too dangerous, and there is still too much exposure for Americans of their civil liberties. But even in those emergency situations, the law requires the Government to seek judicial approval of the wiretap within 48 hours.

So it is not like there can be an emergency wiretap placed on the authority of the top three Justice Department officials, the top three, and left on and then the information used. Within 48 hours, they have to get a court order or cease and desist. That is the second requirement.

First, it has to fit the criteria of immediate danger, death, and so on, which I read. Second, within 48 hours, there has to be a court order. Third, if when they go for the court order, the judge disagrees or declines, the wiretap has to end, and any evidence that has been gotten in that 48 hours cannot be used. It is sort of an exclusionary rule, if you will. It cannot be used.

So Senator LIEBERMAN's amendment, consistent with what the President asked for, would add to the list of emergency situations the following: Conspiratorial activities characteristic of domestic or international terrorism. It seems to me no less broad than conspiratorial activities characteristic of organized crime activities.

Now, the consistent position for my friends to take here, if they are going to take on the amendment of the Senator from Connecticut, would be to amend the existing law to strike conspiratorial activities characteristic of organized crime. I doubt whether they would want to do that. So I am kind of at a loss that if they think that is a good idea, why not conspiratorial activities characteristic of domestic or international terrorism? Is someone going to tell me that they are more at jeopardy or less at jeopardy from the Gambino family than we are from some bunch of screwballs running around in the woods who are planning on blowing up a building? When is the last time the Mafia blew up a building? They are not good guys; they are all bad guys. But I do not quite understand the logic here. I do not understand the logic.

Of course, a wiretap is a powerful and intrusive investigative tool. We have to be careful to guard against its abuses. There are several statutory restrictions that prevent the abuse of emergency wiretaps, none of which would be changed by this amendment.

Now, there is much more that I am inclined to say, but I will not. I will conclude by saying, if a wiretap is authorized and the Government then goes to court within 48 hours, if the order is not granted, the interception is treated as a violation of title III and is inadmissible in trial. This provision, in my view, works no great expansion on the wiretap statute. The Government is still required to get a judicial order. But it is simply allowed to get an order after the fact when there is an emergency situation. The amendment simply extends the emergency wiretap authority to terrorism offenses and, surely, terrorism is as great a threat as organized crime. This is a narrow and sensible amendment. I urge my colleagues to support it.

Let me emphasize that the amendment does not expand the list of offenses which can be investigated using a wiretap. By the way, most Americans—and I know my friend was a distinguished prosecutor and attorney general of his State. He knows full well—but even most practicing lawyers do not know—that you cannot, under the Federal law, get a wiretap for all felonies. You cannot get them for every crime. Most people think that if the FBI has reason to believe any felony is being committed, they can go get a wiretap. That is not true. They cannot even ask for a wiretap for certain crimes.

This does not expand the list of things for which they can have an emergency wiretap. Nor does it expand the list that a judge, when it is 48 hours later and we say, ''Judge, make this real,'' the judge cannot say, ''Well, it is not covered as subject matter for wiretap under the law now, but I will let you do it because the change of the law allows it.'' It does not do that.

It does not expand offenses which can be investigated using a wiretap. All it does is allow an emergency wiretap for those domestic and international terrorist offenses which involve violent acts and acts dangerous to human life. The wiretap must then be approved by the court. Quite frankly, I do not see how it could be construed to cover a simple political demonstration, as my friend from Utah fears.

What I fear is that we are not making a false distinction between acts of terrorism and organized crime. I do not hear anybody suggesting that if the Gambino family gets together for a picnic, we are worried about whether or not an emergency wiretap may impact on their right to have a picnic. I do not hear them saying that.

If a bunch of wackos get together talking about the Federal Government, and the Government has reason to believe they are preparing for or engaging in acts of violence, why not them, too?

To put it in crass terms, if we can mess up the Gambino picnic, we should be able to mess up the screwball picnic, if there is evidence—if there is evidence—that there is a likelihood of a violent act or violent crime to be committed.

I do not know who we are protecting, but it does not seem to make any sense to me. No safeguards that exist now are being reduced. We are adding an additional category, the category seems reasonable to me.

I compliment the Senator on his amendment. I yield the floor.

Mr. SPECTER. Mr. President, I oppose the pending amendment, and I do so with a deference to my colleague from Connecticut because of his experience as Attorney General.

I believe that we ought to be very circumspect and very careful before expanding wiretapping authority at all until there has been an opportunity for very careful study. That opportunity is not present here.

As I have listened to the very abbreviated arguments in the course of less than 30 minutes, there may be no expansion beyond the current law. Nobody has cited an illustration as to what would be subject to wiretap under Senator LIEBERMAN's amendment that would not be subject to wiretap under existing law. It may well be that there are sufficient vagaries in the language of the amendment which could render it overbroad.

This bill has not been subjected to the usual legislative process of a markup, which is where the committee sits down and goes over the bill and considers amendments in a more deliberative fashion than an amendment being presented and debated on the floor over the course of 30 minutes, or a few minutes more.

In saying this, I do not fault, at all, the distinguished Senator from Connecticut, because these are the rules of procedure in the Senate. I do say that it ought to give Members some pause.

As we speak, we are on a Friday near noon and many Senators are waiting to catch planes. The distinguished clerk is nodding in the affirmative. I do not think we ought to legislate in this kind of a rush. Expanding wiretap authority may have a very, very serious impact on civil liberties. No compelling need has been shown for adopting this amendment and, therefore, I think the amendment ought not to be enacted. Under these procedures and time constraints, I am sure of that. I yield the floor.

The PRESIDING OFFICER (Mr. BENNETT). The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, let me assure my friend and colleague from Pennsylvania that I am in no rush.

I have been following this question of how we can best counter terrorism for a long time, and I have been working with people in the FBI, the U.S. attorney offices, and the Justice Department. They tell me that that is an expanded authority that will help them combat terrorism.

I have spent a fair amount of time thinking about this amendment. I have concluded that it gives one more weapon to the folks that are fighting on our side against the terrorists.

Mr. President, I must say I am a little bit surprised by some of the objections which suggest that this authority, limited as it is, as the Senator from Delaware made clear, 48-hour emergency wiretap, three officials at the Justice Department, can authorize on a showing of necessity the same

grounds that a court would use if a court does not similarly authorize the wiretap within 48 hours, it is over, and the evidence seized in between is inadmissible.

Let me go to the concern about whether this authority might be used against domestic political groups compromising their civil liberties. There is nowhere in the language of the proposal, let alone the underlying law which it amends, to suggest that that is possible. It is certainly not my intention.

The term ''domestic terrorism'' which as Senator BIDEN has indicated is what this is about, we take the language here, conspiratorial activities characteristic of organized crime, which an emergency wiretap can be grounded, and add conspiratorial activities characteristic of domestic terrorism.

How do we define ''domestic terrorism?'' It means any activities that involve violent acts, or acts dangerous to human life, that are criminal—that are a violation of the criminal laws of the United States or any State; and on top of that, which appear to be intended to intimidate or coerce a civilian population or influence the policy of the Government by intimidation and coercion.

It takes more than the intention to intimidate or coerce the Government or the American people, one must be contemplating or involved in violent acts or criminal acts with that purpose.

Now, there is no mainstream or out of the mainstream political group that just is expressing points of view that is by any stretch of the imagination going to be subject to an emergency wiretap under this provision.

There is a general point, and I will make it as my final point. It does cover international terrorism as well. We are not talking just domestic political groups, but people or agents of foreign governments, agents of foreign groups that may be on our soil, moving around, attempting or planning acts of violence against us.

The general point in terms of the concern of civil liberties. As is true in so many of these questions of law and order and maintaining that basic order that is the precondition of our liberties, the question is, who do we give the benefit of the doubt? Are we going to side with the potential victims of a terrorist act? Are we going to stretch over so far backward in our concern about civil liberties that we give the benefit of the doubt to the would-be terrorists? To me there ought to be a simple answer to that equation.

It is, in another sense, do we trust those in positions of authority? I have had the privilege of working in law enforcement. The U.S. attorneys, the FBI, the Secret Service—they are not perfect. They are just people. But by and large these are people who are out there every day, as we have seen too often, putting their lives on the line for Government to maintain the order that does protect our liberty.

Give me a choice of giving them another narrowly circumscribed authority to use to stop terrorism, I am going to give it to them with the confidence that in almost every case I can think of, they will use it in an appropriate way. If for some reason they do not, within 48 hours a judge is going to come along and say ''That is it, take the wiretap off.'' And not only that, everything that has been gathered in the 48 hours is inadmissible in court.

This power, incidentally, that has existed under this statute regarding national security and organized crime cases, has rarely been used because of the standard set up in the law and because of the deterrent that if a judge does not confirm the original authorization by the Justice Department, evidence is inadmissible.

Mr. President, I think this is just one smart tool, another smart tool, to give the folks who are out there fighting terrorists on our side to make sure we stop the terrorists before they stop us. I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I understand the distinguished Senator from Delaware would like to speak?

Mr. BIDEN. Mr. President, I ask unanimous consent that a letter and testimony regarding this bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

GUN OWNERS OF AMERICA,
Springfield, VA, May 18, 1995.

DEAR SENATOR: The tragic bombing in Oklahoma City has, unfortunately, provoked a ''feeding frenzy'' of efforts to manipulate the unfortunate victims for the political advantage of certain special interests and ideological points of view. These efforts have been embodied in attempts to blame pro-Second Amendment organizations, pro-life groups, or Republicans in general for what appear to be the actions of isolated madmen.

In this climate, it is particularly important that we not over-react or react foolishly to the heart-rending events which we, as a nation, have witnessed. On April 27, S. 735 was introduced by the Majority Leader and the Chairman of the Senate Judiciary Committee, and was brought directly onto the Senate calendar. While avoiding some of the most extreme proposals which have been posited for political advantage in the wake of the bombing, S. 735 nevertheless contains some provisions which are far too dangerous to be considered without hearings, markup, and the normal checks and balances of the legislative process.

As introduced, Gun Owners of America would oppose S. 735, and would rate any vote for that legislation as an anti-gun vote. In particular, we object to provisions of S. 735 which would:

Allow the BATF to go after gun dealers for far-reaching ''conspiracy'' charges involving no overt act at all;

Significantly broaden the materials which the Secretary of the Treasury could require from law-abiding businesses, groups and individuals;

Preempt state law enforcement efforts in many circumstances which are primarily of local concern,

Broaden the authority of the FBI to make demands of citizens not suspected of crimes, and, in general, increase the ability of government to intrude on the privacy and rights of individuals.

It may well be the Congress, after due consideration, will decide that some changes in federal law are necessary. But this is not an area where legislation should be adopted prior to full consideration of the ramifications of that legislation. I therefore urge you to step back, hold hearings, and take time to consider what, if any, changes in federal law would genuinely address the issue of terrorism, rather than merely serving as a political placebo. The country and the Constitution will both be healthier as a result of your efforts.

Sincerely,

LARRY PRATT,
Executive Director.

EXCERPTS FROM WRITTEN TESTIMONY BEFORE THE U.S. SENATE COMMITTEE ON THE JUDICIARY, SUBMITTED BY DAVID B. KOPEL, ASSOCIATE POLICY ANALYST

WIRETAPPING

Various proposals have been offered to expand dramatically the scope of wiretapping. For example, the Clinton bill defines almost all violent and property crime (down to petty offenses below misdemeanors) as ''terrorism'' and also allow wiretaps for ''terrorism'' investigations.

Other proposals would allow wiretaps for all federal felonies, rather than for the special subet of felonies for which wiretaps have been determined to be especially necessary. Notably, wiretaps are already available for the fundamental terrorist offenses: arson and homicide. Authorizing wiretaps for evasion of federal vitamin regulations, gun registration requirements, or wetlands regulations is hardly a serious contribution to anti-terrorism, but amounts to a bait-and-switch on the American people.

Currently, FBI wiretapping, bugging, and secret break-ins of the property of American groups is allowed after approval from a seven-member federal court which meets in secret. Of the 7,554 applications which the FBI has submitted in since 1978, 7,553 have been approved.

Making the request for vast new wiretap powers all the more unconvincing is how poorly wiretap powers have been used in the past. Terrorists are, of course, already subject to being wiretapped. Yet as federal wiretaps set new record highs every year, wiretaps are used almost exclusively for gambling, racketeering, and drugs. The last known wiretap for a bombing investigation was in 1998. Of the 976 federal electronic eavesdropping applications in 1993, not a single one was for arson, explosives, or firearms, let alone terrorism. From 1983 to 1993, of the 8,800 applications for eavesdropping, only 16 were for arson, explosives, or firearms. In short, requests for vast new wiretapping powers because of terrorism are akin to a carpenter asking for a pile driver to hammer a nail, while a hammer lies nearby, unused.

Even more disturbing than proposals to expand the jurisdictional base for wiretaps are efforts to remove legal controls on wiretaps. For example, wiretaps are authorized for the interception of particular speakers on particular phone lines. If the interception target keeps switching telephones (as by using a variety of pay phones), the government may ask the court for a ''roving wiretap,'' authorizing interception of any phone line the target is using. Yet while roving wiretaps are currently available when the government shows the court a need, the Clinton and Dole bills allow roving wiretaps for ''terrorism''

without court order. (Again, remember that both bills define ''terrorism'' as almost all violent or property crime.)

The Foreign Intelligence Surveillance Act (FISA) provides procedures for authorizing wiretaps in various cases. These procedures have worked in the most serious foreign espionage cases. Yet the Clinton and Dole bills would authorize use of evidence gathered in violation of FISA in certain deportation proceedings.

WARRANTLESS DATA GATHERING

Proposals have also been offered to require credit card companies, financial reporting services, hotels, airlines, and bus companies to turn over customer information whenever demanded by the federal government. Document subpoenas are currently available whenever the government wishes to coerce a company into disclosing private customer information. Thus, the proposals do not increase the type of private information that the government can obtain; the proposals simply allow the government to obtain the information even when the government cannot show a court that there is probable cause to believe that the documents contain evidence of illegal activity.

Similar analysis may be applied to proposals to increase the use of pen registers (which record phone numbers called, but do not record conversations, and thus do not require a warrant). If a phone company has a high enough regard for its customers' privacy so as to not allow pen registers to be used without any controls, the government may obtain a court order to place a pen register. Business respect for customer privacy ought to be encouraged, not outlawed.

CURTAILING FIRST AMENDMENT RIGHTS OF COMPUTER USERS

For some government agencies, the Oklahoma City tragedy has become a vehicle for enactment of ''wish list'' legislation that has nothing to do with Oklahoma City, but which it is apparently hoped the ''do something'' imperative of the moment will not examine carefully.

One prominent example is legislation to drastically curtail the right of habeas corpus. Although Supreme Court decisions in recent years have already sharply limited habeas corpus, prosecutors' lobbies want to go even further. Two obvious points should be made: First, habeas corpus has nothing to do with apprehending criminals; by definition, anyone who files a habeas corpus petition is already in prison. Second, habeas corpus has nothing to do with Oklahoma City in particular, or terrorism in general.

A second example, of piggybacking irrelevant legislation designed to reduce civil liberties are current FBI efforts to outlaw computer privacy.

If a person writes a letter to another person, he can write the letter in a secret code. If the government intercepts the letter, and cannot figure out the secret code, the government is out of luck. These basic First Amendment principles have never been questioned.

But, if instead of writing the letter with pen and paper, the letter is written electronically, and mailed over a computer network rather than postal mail, do privacy interests suddenly vanish? According to FBI director Louis Freeh, the answer is apparently ''yes.''

Testifying before the Senate Judiciary Committee about Oklahoma City, director Freeh complained that people can communicate over the internet ''in encrypted conversations for which we have no available means to read and understand unless that encryption problem is dealt with immediately.'' ''That encryption problem'' (i.e. people being able to communicate privately) could only be solved by outlawing high quality encryption software like Pretty Good Privacy.

First of all, shareware versions of Pretty Good Privacy are ubiquitous throughout American computer networks. The cat cannot be put back in the bag. More fundamentally, the potential that a criminal, including a terrorist, might misuse private communications is no reason to abolish private communications per se. After all, people whose homes are lawfully bugged can communicate privately by writing with an Etch-a-Sketch. That is no reason to outlaw Etch-a-Sketch.

Although Mr. Freeh apparently wants to outlaw encryption entirely, the Clinton administration has been proposing the ''Clipper Chip.'' The federal government has begun requiring that all vendors supplying phones to the federal government include the ''Clipper'' chip. Using the federal government's enormous purchasing clout, the Clinton administration is attempting to make the Clipper Chip into a de facto national standard.

The clipper chips provides a low level of privacy protection against casual snoopers. But some computer scientists have already announced that the chip can be defeated. Moreover, the ''key''—which allows the private phone conversation, computer file, or electronic mail to be opened up by unauthorized third parties—will be held by the federal government.

The federal government promises that it will keep the key carefully guarded, and only use the key to snoop when absolutely necessary. This is the same federal government that promised that social security numbers would only be used to administer the social security system, and that the Internal Revenue Service would never be used for political purposes.

Proposals for the federal government's acquisition of a key to everyone's electronic data, which the government promises never to misuse, might be compared to the federal government's proposing to acquire a key to everyone's home. Currently, people can buy door locks and other security devices that are of such high quality that covert entry by the government is impossible; the government might be able to break the door down, but the government would not be able to enter discretely, place an electronic surveillance device, and then leave. Thus, high-quality locks can defeat a lawful government attempt to read a person's electronic correspondence or data.

Similarly, it is legal for the government to search through somebody's garbage without a warrant; but there is nothing wrong with the privacy-conscious people and businesses using paper shredders to defeat any potential garbage snooping. Even if high-quality shredders make it impossible for documents to be pieced back together, such shredders should not be illegal.

Likewise, while wiretaps or government surveillance of computer communications may be legal, there should be no obligation of individuals or businesses to make wiretapping easy. Simply put, Americans should not be required to live their lives in a manner so that the government can spy on them when necessary.

Thus, although proposals to outlaw or emasculate computer privacy are sometimes defended as maintaining the status quo (easy government wiretaps), the true status quo in America is that manufacturers and consumers have never been required to buy products which are custom-designed to facilitate government snooping.

The point is no less valid for electronic keys than it is for front-door keys. The only reason that electronic privacy invasions are even discussed (whereas their counterparts for ''old-fashioned'' privacy invasions are too absurd to even be contemplated), is the tendency of new technologies to be more highly restricted than old technologies. For example, the Supreme Court in the 1920's began allowing searches of drivers and automobiles that would never have been allowed for persons riding horses.

But the better Supreme Court decisions recognize that the Constitution defines a relationship between individuals and the government that is applied to every new technology. For example, in United States v. Katz, the Court applied the privacy principle underlying the Fourth Amendment to prohibit warrantless eavesdropping on telephone calls made from a public phone booth—even though telephones had not been invented at the time of the Fourth Amendment. Likewise, the principle underlying freedom of the press—that an unfettered press is an important check on secretive and abusive governments—remains the same whether a publisher uses a Franklin press to produce a hundred copies of a pamphlet, or laser printers to produce a hundred thousand. Privacy rights for mail remain the same whether the letter is written with a quill pen and a paper encryption ''wheel,'' or with a computer and Pretty Good Privacy.

Efforts to limit electronic privacy will harm not just the First Amendment, but also American commerce. Genuinely secure public-key encryption (like Pretty Good Privacy) gives users the safety and convenience of electronic files plus the security features of paper envelopes and signatures. A good encryption program can authenticate the creator of a particular electronic document—just as a written signature authenticates (more or less) the creator of a particular paper document.

Public-key encryption can greatly reduce the need for paper. With secure public-key encryption, businesses could distribute catalogs, take orders, pay with digital cash, and enforce contracts with veriable signatures—all without paper.

Conversely the Clinton administration's weak privacy protection (giving the federal government the ability to spy everywhere) means that confidential business secrets will be easily stolen by business competitors who can bribe local or federal law enforcement officials to divulge the ''secret'' codes for breaking into private conversations and files, or who can hack the clipper chips.

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RIGHT TO KEEP AND BEAR ARMS

Cracking down on militias

Equating all militias with white supremacists is nonsense. Like the Los Angeles Police Department, some militias may have members, or even officers, who are racist, but that does not mean that the organization as a whole, or the vast majority of its members are racists. Most militias are composed of people with jobs and families; people who are seeking to protect what they have, not to inflict revenge on others for their own failings.

The frenzy of hatred being whipped up against law-abiding militia members is not unlike the hatred to which law-abiding Arab-Americans would have been subjected, had Oklahoma City been perpetrated by the Libyan secret service. It is not unlike the hatred to which Japanese-Americans were subjected after World War II. Ironically, some politicians who complain about the coarse, angry tone of American politics do so in speeches in which they heap hate-filled invective upon anyone and everyone who belongs to a militia.

As this Issue Brief is written, no evidence has developed which ties any militia (let

alone all of them) to the Oklahoma City crime. At most, two suspects are said to have attended a few militia meetings and left because the militias did not share their goals. This fact no more proves a militia conspiracy than the hypothetical fact that the suspects went to church a few times would prove that the Pope and Jerry Falwell masterminded the Oklahoma City bombing.

That someone who perpetrated a crime may have attended a militia meeting is hardly proof that all militias should be destroyed. The step-father of Susan Smith (the alleged South Carolina child murderer) sexually molested her one night after he returned from putting up posters for the Pat Robertson presidential campaign. What if someone suggested that the ''radical'' patriarchal theories espoused by Robertson and the Christian Coalition created the ''atmosphere'' which led to the incestuous rape, and that therefore all Christian Coalition members were responsible for the crime, and the FBI should ''crack down'' on them? The claim would be dismissed in a second; equally outrageous claims about gun owners should likewise be dismissed.

It is a sad testament to the bigotry of certain segments of the media that totally unsubstantiated, vicious conspiracy theories of the type which were once employed against Catholics and Jews are now being trotted out against militia members, patriots, and gun owners.

No militia group was involved with the Oklahoma City bombing. Despite the hatemongering of the media, the ''need'' to start spying on militia groups is a totally implausible basis for expansion of federal government powers.

Moreover, militia groups hold public meetings, sometimes advertising in local newspapers. There is hardly a need for greater ''surveillance'' of such public groups.

To respond intelligently to the militia and patriot movements, we must acknowledge that, although the movements are permeated with implausible conspiracy theories, the movements are a reaction to increasing militarization, lawlessness, and violence of federal law enforcement, a genuine problem which should concern all Americans.

We must also remember that it is lawful in the United States to exercise freedom of speech and the right to bear arms. Spending one's weekends in the woods practicing with firearms and listening to right-wing political speeches is not my idea of a good time, but there is not, and should not, be anything illegal about it.

If we want to shrink the militia movement, the surest way is to reduce criminal and abusive behavior by the federal government, and to require a thorough, open investigation by a Special Prosecutor of what happened at Waco and at Ruby Ridge, Idaho. If, as the evidence strongly suggests, the law was broken, the law-breakers should be prosecuted, even if they happen to be government employees.

Conversely, the persons responsible for the deaths of innocent Americans should not be promoted to even-higher positions in the FBI or federal law enforcement. If the Clinton administration were trying to fan the flames of paranoia, it could hardly do better than to have appointed Larry Potts second-in-command at the FBI.

Militias and patriot groups have been understandably ridiculed for a paranoid world-view centered on the United Nations and international banking. But ironically, many of the people doing the ridiculing share an equally paranoid world-view. Most members of the establishment media and the gun control movement have no more idea what a real militia member is like than militia members have about what a real international banker is like. In both cases, stereotyping substitutes for understanding, and familiar devils (the United Nations for the militia, the National Rifle Association for the establishment media) are claimed to be the motive force behind the actions of a man who (allegedly) believes that the government put a microchip in his buttocks.

Nearly twenty years ago, an article in the Public Interest explained the American gun control conflict:

''[U]nderlying the gun control struggle is a fundamental division in our nation. The intensity of passion on this issue suggests to me that we are experiencing a sort of low-grade war going on between two alternative views of what America is and ought to be. On the one side are those who take bourgeois Europe as a model of a civilized society: a society just, equitable, and democratic; but well ordered, with the lines of authority clearly drawn, and with decisions made rationally and correctly by intelligent men for the entire nation. To such people, hunting is atavistic, personal violence is shameful, and uncontrolled gun ownership is a blot upon civilization.

''On the other side is a group of people who do not tend to be especially articulate or literate, and whose world view is rarely expressed in print. Their model is that of the independent frontiersman who takes care of himself and his family with no interference from the state. They are 'conservative' in the sense that they cling to America's unique pre-modern tradition—a non-feudal society with a sort of medieval liberty at large for every man. To these people, 'sociological' is an epithet. Life is tough and competitive. Manhood means responsibility and caring for your own.''

The author explained the disaster that America will create for itself if fearful in government attempt to ''crack down'' on fearful gun-owners, thereby fulfilling the worst fears that each group has of the other:

''As they [the gun-owners] say to a man, 'I'll bury my guns in the wall first.' They ask, because they do not understand the other side, 'Why do these people want to disarm us?' They consider themselves no threat to anyone; they are not criminals, not revolutionaries. But slowly, as they become politicized, they find an analysis that fits the phenomenon they experience: Someone fears their having guns, someone is afraid of their defending their families, property, and liberty. Nasty things may happen if these people begin to feel that they are concerned.

It would be useful, therefore, if some of the mindless passion, on both side, could be drained out of the gun-control issue. Gun control is no solution to the crime problem, to the assassination problem, to the terrorist problem. . . . [S]o long as the issue is kept at a white heat, with everyone having some ground to suspect everyone else's ultimate intentions, the rule of reasonableness has little chance to assert itself.''

ASSAULT WEAPONS

Perhaps the most cynical effort to exploit the Oklahoma City tragedy is the effort of gun prohibition advocates to use the murders as a pretext for preserving the federal ban on so-called ''assault weapons.'' To state the obvious, the Oklahoma City bombing was perpetrated with a bomb, not a gun. The bombers may have attended meetings of groups which support the right to keep and bear arms, but that does not prove that gun rights groups were coconspirators, despite the vicious insinuations of some gun prohibition advocates.

The reasons for repealing the gun ban remain as strong as ever. First of all, Congress has no Constitutional power (under the Constitution's text and original intent) to ban the simple possession (as opposed to sale in interstate commerce) of anything.

Second, if one looks at actual police data (rather than unsupported claims from anti-gun police administrators), ''assault weapons'' constitute only about one percent of crime guns.

Third, despite the menacing looks of so-called ''assault weapons,'' they are not more powerful or more deadly than firearms with a more conventional appearance. Instead, the ''assault weapon'' ban is based on cosmetics, such as whether a gun has a bayonet lug—as if criminals were perpetrating drive-by bayonetings.

Finally, the ban has already been nullified for all practical purposes. Since the law defines an ''assault weapon'' based on trivial characteristics like bayonet lugs, gun manufacturers have already brought ought new versions of the banned guns, minus the cosmetically offensive bayonet lugs and similar components.

Repeal of the ''assault weapon'' ban makes sense as a move towards a more rational federal criminal justice policy. It makes even more sense when its social impact is considered. Many gun control advocates acknowledged that ''assault weapons'' were a tiny component of the gun crime problem, but they still liked the ban because of its symbolic value. A great many other people, however, were very upset by the symbolic message of the gun ban. Some of them have joined militias, patriot groups, or similar organizations. Indeed, it would be no exaggeration to say that President Clinton, Representative Schumer, and Senator Feinstein have, through pushing the gun ban through Congress, done more to promote the surge in militia membership than anyone else in the nation.

If we want to reduce the number of people who are frightened by the federal government, the federal government should stop frightening so many people. Given the irrelevance of the ''assault weapon'' ban to actual crime control, repeal of the ban would be a very important step that the federal government could take to convincing millions of Americans that it is not a menace to their liberty. Conversely, retention of a ban on cosmetically-incorrect firearms by law-abiding citizens would be a strong statement to the American people that their federal government does not trust them; and if so, why should they trust it?

BAN ON TRAINING

Morris Dees of the Southern Poverty Law Center has begun promoting a federal ban on group firearms training which is not authorized by state law. First of all, state governments are perfectly capable of banning or authorizing whatever they want. The proposal for a federal ban amounts to asking Washington for legislation similar to that which various allies of Mr. Dees promoted at the state level in the 1980s, with little success. The vast majority of states having rejected a training ban, the federal government should hardly impose the will of the small minority on the rest of the states.

A former direct-mail fundraiser for the antigun lobby, Mr. Dees may be forgiven for a low level of concern for the exercise of the right to keep and bear arms. But the right to keep and bear arms necessarily includes the right to practice with them, just as the Constitutional right to read a newspaper editorial about political events necessarily includes the right to learn how to read. Just as the government may not forbid people from learning how to read in groups, it may not forbid people from learning how to use firearms in groups.

''Organizing, arming, and training in conjunction with a political agenda would be

seen as dangerous in any other society but our own,'' a private security consultant recently told Congress, demanding that ''these groups be flatly dealt with as 'enemies of our society.' ''

Of course the United States was founded by ''religious nuts with guns,'' and later achieved independence as a result of a war instigated by people who organized, armed, and trained with a political agenda. The spark of the revolutionary war, the battle of Lexington and Concord, was prompted by the ruling government's attempts to confiscate the ''assault weapons'' of the day held by local militias. It was at the Concord Bridge where militiamen were ordered to ''wait until you see the whites of their eyes'' and then shot government employees who were coming to arrest them for possessing an illegal ''assault weapon'' (a cannon). The Texan revolution against Mexico likewise began over civilian possession of ''military'' arms, when the Mexican government demanded that settlers hand over a cannon, and the Texans replied, ''Come and take it!''

The militiamen of Concord Bridge and Texas may have broken the law, but they were great men, worthy of admiration by every schoolchild, and every other American. ''You need only reflect that one of the best ways to get yourself a reputation as a dangerous citizen these days is to go around repeating the very phrases which our founding fathers used in their struggle for independence,'' observed American historian Charles A. Beard.

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Some people have claimed that criticism of an alleged pattern of criminal conduct at the Bureau of Alcohol, Tobacco and Firearms is tantamount to complicity in the Oklahoma City bombing. If so, then the United States Senate is the party ultimately at fault. In 1982, the Senate Subcommittee on the Constitution investigated the BATF and unanimously concluded that the agency had habitually engaged in:

''. . . conduct which borders on the criminal. . . . [E]nforcement tactics made possible by current firearms laws are constitutionally, legally and practically reprehensible. . . . [A]pproximately 75 percent of BATF gun prosecutions were aimed at ordinary citizens who had neither criminal intent nor knowledge, but were enticed by agents into unknowing technical violations.''

If it is legitimate for a United States Senate subcommittee to find that BATF operations consist of ''conduct which borders on the criminal,'' it is hardly inappropriate for other persons to point out similar conduct.

The Waco raid was the most spectacular, but hardly the only instance of abuse of power by BATF in conducting search warrants.

On December 16, 1991 (the first day of the third century of the Bill of Rights), sixty BATF agents, accompanied by two television crews, broke into the Oklahoma home of John Lawmaster. Acting on a tip (suspected to be from Lawmaster's ex-wife) that Lawmaster had illegally converted a semiautomatic to full automatic, BATF worked with the ex-wife to lure Lawmaster away from his home before the raid. With Lawmaster absent, BATF knocked down his front door with a battering ram. While some agents stood guard with weapons drawn, other agents broke open his gun safe, scattered his personal papers, spilled boxes of ammunition onto the floor, and broke into a small, locked box that contained precious coins. To look through some ceiling tiles, one agent stood on a table, breaking the table in the process.

Neighbors who asked what BATF was doing were threatened with arrest. Having found nothing illegal, BATF left weapons and ammunition strewn about the home, and departed. They closed the doors, but since BATF had broken the doors on the way in, the doors could not be latched or locked. Upon returning to the shambles that remained of his home, Lawmaster found a note from BATF: ''Nothing found.'' Utility company representatives arrived, and told Lawmaster that they had been told to shut off all his utilities.

One of the field commanders of the Waco raid was Ted Royster, head of BATF operations for Texas, Oklahoma, and New Mexico. Royster also supervised the Lawmaster ''raid,'' watching the operation from a parked vehicle with tinted windows.

On February 5, 1993—23 days before the Waco raid—BATF ransacked the home of Janice Hart, a black woman in Portland, Oregon, terrorizing her and her three children for hours, destroying her furniture, slamming a door on a child's foot, forcing two children to wait outside in a car while Ms. Hart was interrogated inside, and refusing to allow her to call an attorney, until BATF discovered that there was a case of mistaken identity. (BATF had been looking for Janice Harold, who bears no resemblance to Mrs. Hart.) In this case, unlike most others, BATF did at least send a check for damages, although no apology was offered.

As reported by the Washington Times:

''In 1990, [Louis Katona] lent a military-style grenade launcher to ATF for use in an unrelated prosecution, but it was never returned.

''In May 1992, ATF executed a search warrant at his home. During the search, Mr. Katona said his car's tires were flattened, his firearms were intentionally damaged and his pregnant wife was manhandled so roughly that she had a miscarriage.

''In September, he was charged with 19 felonies * * * When the case went to trial in April 1994, U.S. District Judge George W. White directed a verdict of not guilty—asking on the record, 'Where's the beef?' ''

In a case which is widely known among the gun community, but which has been ignored by the national press, except for the Washington Times, the home of gun show promoters Harry and Theresa Lamplugh was raided by BATF in 1994. At least fifteen BATF agents, armed with machine guns, burst into Lamplugh's home one morning. Mr. Lamplugh asked the men, most of whom were not wearing uniforms, if they had a warrant. ''Shut the fxxxx up mother fxxxer; do you want more trouble than you already have?'' they responded, sticking a machine gun in his face.

Over the next six and half hours, BATF agents demolished the home, refused to let the Lamplughs get dressed, held a pizza party, killed three house cats (including a Manx kitten which was stomped to death), scattered Mr. Lamplugh's cancer pills all over the floor, and carted off over eighteen thousand dollars worth of the Lamplugh's property, plus their medical records. Nearly a year later, the government has neither filed any criminal charges, nor returned any property, even the medical records.

The first of BATF's notorious raids came on June 7, 1971, when agents broke into the home of Kenyon Ballew. A burglar had told the police that Ballew owned grenades. Ballew did own empty grenade hulls, which are entirely legal and unregulated. Wearing ski masks and displaying no identification, BATF agents broke down Ballew's door with a battering ram. Responding to his wife's screams, Ballew took out an antique blackpowder pistol, and was promptly shot by BATF. Nothing illegal was found. He remains confined to a wheelchair as a result of the shooting, and now subsists on welfare.

If the sear (the catch that holds the hammer at cock) on a semiautomatic rifle wears out, the rifle may malfunction and repeat fire. The BATF arrested and prosecuted a smalltown Tennessee police chief for possession of an automatic weapon (actually a semiautomatic with a worn-out sear), even though the BATF conceded that the police chief had not deliberately altered the weapon. In March and April of 1988, BATF pressed similar charges for a worn-out sear against a Pennsylvania state police sergeant. After a 12-day trial, the federal district judge directed a verdict of not guilty and called the prosecution ''a severe miscarriage of justice.''

Today, observes Robert E. Sanders, a former head of BATF's criminal division, the bureau's leaders, to the great dismay of many high-quality field agents, have ''shifted from the criminal to the gun,'' and are now waging ''an all-out war against the gun.'' Sanders noted that ''Instead of focusing on selected criminals, there is an indiscriminate focus on anyone who owns guns. They are in total consonance with the Clinton administration's anti-gun position and with the gun control groups.''

BATF's management has consistently proven itself unwilling to obey statutory law. The Firearm Owners' Protection Act specifically forbids BATF to gather registration information about guns to gun owners, except in connection with a criminal investigation. Nevertheless, BATF is implementing ''Project Forward Trace'' to register the owners of certain legal semiautomatic firearms.

The Treasury Department defends the Waco attack on the basis that ''the raid fit within an historic, well-established and well-defended government interest in prohibiting and breaking up all organized groups that sought to arm or defend themselves.'' The candid admission of BATF's objective, however, conflicts with the fact that nothing in existing law makes it illegal for persons, alone or in groups, to collect large number of weapons and to defend themselves. To the contrary, the ownership of large numbers of weapons is specifically protected by federal statute, by federal case law, and of course by the Second Amendment.

One approach to improving BATF's conduct would be incremental reforms of the statutes governing BATF. Such an approach was attempted by the Firearm Owners' Protection Act, signed into law in 1986. The 1986 reforms, pushed by the National Rifle Association and other pro-gun organizations, reduced BATF search authority, especially for paperwork technicalities, and increased penalties for armed career criminals. Yet even today, the armed career criminal statutes are often enforced in a manner targeting small-scale, unarmed offenders.

The Bureau of Alcohol, Tobacco and Firearms (a descendant of the Bureau of Prohibition) enforces the federal alcohol laws in a manner also characterized by administrative abuse, over-reaching beyond statutory power, and selective enforcement against persons or companies who dare to criticize BATF.

Nor are people outside of BATF the only victims. Planning for the BATF raid on the Mount Carmel Center in Waco began shortly after the Bureau found out that Sixty Minutes was working on a story about sexual harassment at BATF. Months later, Sixty Minutes host Mike Wallace opined ''Almost all the agents we talked to said that they believe the initial attack on that cult in Waco was a publicity stunt—the main goal of which was to improve AFT's tarnished image.'' (The codeword for the beginning of the BATF raid was ''showtime.'')

The Sixty Minutes report was devastating. BATF agent Michelle Roberts told the television program that after she and some male agents finished a surveillance in a parking lot, ''I was held against the hood of my car and had my clothes ripped at by two other agents.'' Agent Roberts claimed she was in fear of her life. The agent who verified Ms. Roberts' complaints claims that he was pressured to resign from BATF. Another agent, Sandra Hernandez, said her complaints about sexual harassment were at first ignored by BATF, and she was then demoted to file clerk and transferred to a lower-ranking office. BATF agent Bob Hoffman said ''[T]he people I put in jail have more honor than the top administration in this organization.'' Agent Lou Tomasello said, ''I took an oath. And the thing I find totally abhorrent and disgusting is these higher-level people took that same oath and they violate the basic principles and tenets of the Constitution and the laws and simple ethics and morality.'' Black BATF agents have complained about discrimination in assignments.

Abolishing BATF is no solution, for abolition would leave in place the federal alcohol, tobacco and firearms laws, and transfer their enforcement responsibility to some other agency. It is the very nature of the victimless crimes—such as laws criminalizing the peaceful possession or manufacture of alcohol or firearms—which lead to enforcement abuses. As long as the consensual offense laws remain in the U.S. Code, abusive enforcement is likely, as has been the historical norm since the enactment of such laws. Removing most firearm (and alcohol and tobacco) laws from the federal statutes does not imply that alcohol, tobacco, and firearms should be subject to no legal controls. Rather, the control of those objects can continue to be achieved at the state level, without a redundant layer of federal control and the manifold temptations of federal abuse.

Since 1985, BATF's size has increased 50%, from 2,900 employees to 4,300. In a time of vast budget deficits, simply restoring BATF to its former size might save both taxpayer dollars and taxpayer lives.

While BATF's performance at Waco was disgraceful, two facts should be kept in mind: First, the BATF has a large number of honorable, admirable employees who have quietly gone about their work for years enforcing federal regulations applicable to gun dealers, and enforcing federal laws against possession of guns by persons with felony convictions for violent crime. Misbehavior of some BATF staff (and some BATF leadership) should not be taken as proof that all BATF employees are bad.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, the current United States Code provides emergency authority that is totally adequate to resolve the problems that are raised by the distinguished Senator from Connecticut. I have chatted with him about the fact that I am going to move to table his amendment.

I do so move to table his amendment. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question occurs on the motion to table amendment No. 1200, offered by the Senator from Connecticut [Mr. LIEBERMAN].

The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from New Mexico [Mr. DOMENICI], the Senator from Texas [Mr. GRAMM], the Senator from North Carolina [Mr. HELMS], the Senator from Texas [Mrs. HUTCHISON], the Senator from Oklahoma [Mr. INHOFE], the Senator from Arizona [Mr. KYL], the Senator from Arizona [Mr. MCCAIN], the Senator from Alaska [Mr. MURKOWSKI], and the Senator from Delaware [Mr. ROTH] are necessarily absent.

Mr. FORD. I announce that the Senator from California [Mrs. BOXER], the Senator from New Jersey [Mr. BRADLEY], the Senator from Nebraska [Mr. BRYAN], the Senator from California [Mrs. FEINSTEIN], the Senator from Nebraska [Mr. KERREY], the Senator from Massachusetts [Mr. KERRY], the Senator from Vermont [Mr. LEAHY], and the Senator from Arkansas [Mr. PRYOR] are necessarily absent.

I also announce that the Senator from Wisconsin [Mr. FEINGOLD], the Senator from Wisconsin [Mr. KOHL], and the Senator from Georgia [Mr. NUNN] are absent because of attending funeral.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 52, nays 28, as follows:

[Rollcall Vote No. 233 Leg.]

YEAS—52

Abraham	Faircloth	Packwood
Ashcroft	Frist	Pressler
Baucus	Gorton	Reid
Bennett	Grams	Santorum
Bond	Grassley	Sarbanes
Brown	Gregg	Shelby
Burns	Hatch	Simon
Byrd	Hatfield	Simpson
Campbell	Heflin	Smith
Chafee	Jeffords	Snowe
Coats	Kassebaum	Specter
Cochran	Kempthorne	Stevens
Cohen	Lott	Thomas
Coverdell	Lugar	Thompson
Craig	Mack	Thurmond
D'Amato	McConnell	Warner
DeWine	Moseley-Braun	
Dole	Nickles	

NAYS—28

Akaka	Ford	Lieberman
Biden	Glenn	Mikulski
Bingaman	Graham	Moynihan
Breaux	Harkin	Murray
Bumpers	Hollings	Pell
Conrad	Inouye	Robb
Daschle	Johnston	Rockefeller
Dodd	Kennedy	Wellstone
Dorgan	Lautenberg	
Exon	Levin	

NOT VOTING—20

Boxer	Helms	Leahy
Bradley	Hutchison	McCain
Bryan	Inhofe	Murkowski
Domenici	Kerrey	Nunn
Feingold	Kerry	Pryor
Feinstein	Kohl	Roth
Gramm	Kyl	

So the motion to lay on the table the amendment (No. 1200) was agreed to.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, has the time expired on the Pastore rule?

The PRESIDING OFFICER. The Senate is still operating under the Pastore rule.

Mr. BYRD. I ask unanimous consent that I may speak out of order for not to exceed 4 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, the Senator is recognized to speak out of order for 4 minutes.

Mr. BYRD. I thank the Chair.

MEDIA DOUBLE STANDARD

Mr. BYRD. Mr. President, I address the Senate today with respect to the May 22, 1995, Washington Post style section story by Howard Kurtz. The substance of the article was to highlight the double standard adopted by columnist George Will in criticizing the Clinton administration's decision to add tariffs to Japanese luxury cars.

In lampooning the Clinton White House for taking the tough trade stand with Japan, Mr. Will failed to mention his wife's relationship as a lobbyist for the Japanese automobile industry. According to the article, Mr. Will was quite indignant to think that anyone would suspect his motives. If a Member of Congress or an administration official in a similar situation had taken such a position, you can be sure that the press, including Mr. Will, would have taken him or her to task. Tomes would have been written about the abuse of power and corruption of the system. Efforts would have been made to discredit and to embarrass the individual. This railing would have gone on until either an apology was forthcoming or, in some cases, until a resignation was tendered.

It is exactly this type of lack of an ethical barometer on the part of the media that tips the scales of fairness in reporting. Members of the legislative, executive, and judicial branches must file regular financial reports and must abide by stringent rules of ethics. This is only proper in matters involving the public's trust.

My argument rests with the total lack of parity in the communications industry. There are no comparable ethical standards or rules which govern the media. This is true despite the fact that the levels of power and persuasion are as great or greater with the press than they are with those in public service. Until some effort is made to level the playing field and throw out the bias, the rampant cynicism and distrust on the part of the people will continue. Nothing points more dramatically to the need for change than Mr. Will's arrogance and lack of candor in this instance.

I thank Mr. Kurtz for bringing this matter to the attention of the American public, and I ask unanimous consent that the Washington Post article be printed in the RECORD. I suggest that all Senators who have not read it, do so.

I yield the floor.

There being no objection, the article was ordered to be printed in the RECORD, as follows: